

organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

(e) Standards for a bypass

If a local educational agency is prohibited by law from providing for the participation in programs on an equitable basis of eligible children enrolled in private elementary schools and secondary schools, or if the Secretary determines that a local educational agency has substantially failed or is unwilling, to provide for such participation, as required by this section, the Secretary shall—

(1) waive the requirements of this section for such local educational agency;

(2) arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section and sections 7883 and 7884 of this title; and

(3) in making the determination under this subsection, consider one or more factors, including the quality, size, scope, and location of the program and the opportunity of eligible children to participate.

(Pub. L. 89–10, title I, §1117, formerly §1120, as added Pub. L. 107–110, title I, §101, Jan. 8, 2002, 115 Stat. 1508; renumbered §1117 and amended Pub. L. 114–95, title I, §§1000(3), 1011, Dec. 10, 2015, 129 Stat. 1814, 1871.)

Editorial Notes

PRIOR PROVISIONS

A prior section 6320, Pub. L. 89–10, title I, §1119, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3555, related to professional development, prior to the general amendment of this subchapter by Pub. L. 107–110.

A prior section 1117 of Pub. L. 89–10 was classified to section 6317 of this title, prior to repeal by Pub. L. 114–95.

Another prior section 1117 of Pub. L. 89–10 was classified to section 6318 of this title prior to the general amendment of this subchapter by Pub. L. 107–110.

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114–95, §1011(1)(A), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “To the extent consistent with the number of eligible children identified under section 6315(b) of this title in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall, after timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis, special educational services or other benefits under this part (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs, and shall ensure that teachers and families of the children participate, on an equitable basis, in services and activities developed pursuant to sections 6318 and 6319 of this title.”

Subsec. (a)(3). Pub. L. 114–95, §1011(1)(B), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.”

Subsec. (a)(4). Pub. L. 114–95, §1011(1)(C), added par. (4) and struck out former par. (4). Prior to amendment,

text read as follows: “Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the local educational agency may determine each year or every 2 years.”

Subsec. (a)(5). Pub. L. 114–95, §1011(1)(D), inserted “, or, in a case described in subsection (b)(6)(C), the State educational agency involved,” after “local educational agency”.

Subsec. (b)(1). Pub. L. 114–95, §1011(2)(A)(i), in introductory provisions, substituted “part. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, the results of which agreement shall be transmitted to the ombudsman designated under subsection (a)(3)(B). Such process shall include consultation on issues such as—” for “part, on issues such as—”.

Subsec. (b)(1)(E). Pub. L. 114–95, §1011(2)(A)(ii), struck out “and” before “the proportion of funds”, substituted “(a)(4)(A)” for “(a)(4)”, and inserted “, and how that proportion of funds is determined” before semicolon at end.

Subsec. (b)(1)(I) to (L). Pub. L. 114–95, §1011(2)(A)(iii)–(v), added subpars. (I) to (L).

Subsec. (b)(2) to (4). Pub. L. 114–95, §1011(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 114–95, §1011(2)(B), (D), redesignated par. (4) as (5), inserted “meaningful” before “consultation” in first sentence, inserted second sentence, and substituted “such consultation has, or attempts at such consultation have, taken place” for “such consultation has taken place” in last sentence. Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 114–95, §1011(2)(B), redesignated par. (5) as (6).

Subsec. (b)(6)(A). Pub. L. 114–95, §1011(2)(E)(i), substituted “right to file a complaint with” for “right to complain to”, inserted “asserting” after “State educational agency”, struck out “or” before “did not give due consideration”, and inserted “, or did not make a decision that treats the private school students equitably as required by this section” before period at end.

Subsec. (b)(6)(B). Pub. L. 114–95, §1011(2)(E)(ii), substituted “wishes to file a complaint,” for “wishes to complain,”.

Subsec. (b)(6)(C). Pub. L. 114–95, §1011(2)(E)(iii), added subpar. (C).

Subsec. (c)(2). Pub. L. 114–95, §1011(3), made technical amendment to reference in original act which appears in text as reference to section 7883 of this title.

Subsec. (e)(2). Pub. L. 114–95, §1011(4), made technical amendment to reference in original act which appears in text as reference to sections 7883 and 7884 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of this title.

§ 6321. Fiscal requirements

(a) Maintenance of effort

A local educational agency may receive funds under this part for any fiscal year only if the State educational agency involved finds that the local educational agency has maintained the agency’s fiscal effort in accordance with section 7901 of this title.

(b) Federal funds to supplement, not supplant, non-Federal funds

(1) In general

A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from State and local sources for the education of students participating in programs assisted under this part, and not to supplant such funds.

(2) Compliance

To demonstrate compliance with paragraph (1), a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under this part.

(3) Special rule

No local educational agency shall be required to—

(A) identify that an individual cost or service supported under this part is supplemental; or

(B) provide services under this part through a particular instructional method or in a particular instructional setting in order to demonstrate such agency's compliance with paragraph (1).

(4) Prohibition

Nothing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local educational agency uses to allocate State and local funds to each school receiving assistance under this part.

(5) Timeline

A local educational agency—

(A) shall meet the compliance requirement under paragraph (2) not later than 2 years after December 10, 2015; and

(B) may demonstrate compliance with the requirement under paragraph (1) before the end of such 2-year period using the method such local educational agency used on the day before December 10, 2015.

(c) Comparability of services

(1) In general

(A) Comparable services

Except as provided in paragraphs (4) and (5), a local educational agency may receive funds under this part only if State and local funds will be used in schools served under this part to provide services that, taken as a whole, are at least comparable to services in schools that are not receiving funds under this part.

(B) Substantially comparable services

If the local educational agency is serving all of such agency's schools under this part, such agency may receive funds under this part only if such agency will use State and local funds to provide services that, taken as a whole, are substantially comparable in each school.

(C) Basis

A local educational agency may meet the requirements of subparagraphs (A) and (B) on a grade-span by grade-span basis or a school-by-school basis.

(2) Written assurance

(A) Equivalence

A local educational agency shall be considered to have met the requirements of paragraph (1) if such agency has filed with the State educational agency a written assurance that such agency has established and implemented—

(i) a local educational agency-wide salary schedule;

(ii) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and

(iii) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

(B) Determinations

For the purpose of this subsection, in the determination of expenditures per pupil from State and local funds, or instructional salaries per pupil from State and local funds, staff salary differentials for years of employment shall not be included in such determinations.

(C) Exclusions

A local educational agency need not include unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year in determining comparability of services under this subsection.

(3) Procedures and records

Each local educational agency assisted under this part shall—

(A) develop procedures for compliance with this subsection; and

(B) maintain records that are updated biennially documenting such agency's compliance with this subsection.

(4) Inapplicability

This subsection shall not apply to a local educational agency that does not have more than one building for each grade span.

(5) Compliance

For the purpose of determining compliance with paragraph (1), a local educational agency may exclude State and local funds expended for—

(A) language instruction educational programs; and

(B) the excess costs of providing services to children with disabilities as determined by the local educational agency.

(d) Exclusion of funds

For the purpose of complying with subsections (b) and (c), a State educational agency or local educational agency may exclude supplemental State or local funds expended in any school attendance area or school for programs that meet the intent and purposes of this part.

(Pub. L. 89–10, title I, §1118, formerly §1120A, as added Pub. L. 107–110, title I, §101, Jan. 8, 2002, 115 Stat. 1511; renumbered §1118 and amended Pub. L. 114–95, title I, §§1000(4), 1012, Dec. 10, 2015, 129 Stat. 1814, 1874.)

Editorial Notes

PRIOR PROVISIONS

A prior section 6321, Pub. L. 89–10, title I, §1120, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3557, related to participation of children enrolled in private schools, prior to the general amendment of this subchapter by Pub. L. 107–110.

A prior section 1118 of Pub. L. 89–10 was renumbered section 1116 and is classified to section 6318 of this title.

Another prior section 1118 of Pub. L. 89–10 was classified to section 6319 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–95, §1012(1), made technical amendment to reference in original act which appears in text as reference to section 7901 of this title.

Subsec. (b). Pub. L. 114–95, §1012(2), added subsec. (b) and struck out former subsec. (b) which consisted of pars. (1) and (2) relating to general use of funds only to supplement and not to supplant non-Federal funds and special rule that no local educational agency be required to provide services through a particular instructional method or in a particular instructional setting.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of this title.

§ 6322. Coordination requirements

(a) In general

Each local educational agency receiving assistance under this part shall carry out the activities described in subsection (b) with Head Start agencies and, if feasible, other entities carrying out early childhood development programs. Each local educational agency shall develop agreements with such Head Start agencies and other entities to carry out such activities.

(b) Activities

The activities referred to in subsection (a) are activities that increase coordination between the local educational agency and a Head Start agency and, if feasible, other entities carrying out early childhood education programs serving children who will attend the schools of the local educational agency, including—

(1) developing and implementing a systematic procedure for receiving records regarding such children, transferred with parental consent from a Head Start program or, where applicable, another early childhood education program;

(2) establishing channels of communication between school staff and their counterparts (including teachers, social workers, and health staff) in such Head Start agencies or other entities carrying out early childhood education programs, as appropriate, to facilitate coordination of programs;

(3) conducting meetings involving parents, kindergarten or elementary school teachers, and Head Start teachers or, if appropriate, teachers from other early childhood education programs, to discuss the developmental and other needs of individual children;

(4) organizing and participating in joint transition-related training of school staff, Head Start program staff, and, where appropriate, other early childhood education program staff; and

(5) linking the educational services provided by such local educational agency with the services provided by local Head Start agencies.

(c) Coordination of regulations

The Secretary shall work with the Secretary of Health and Human Services to coordinate regulations promulgated under this part with regulations promulgated under the Head Start Act [42 U.S.C. 9831 et seq.].

(Pub. L. 89–10, title I, §1119, formerly §1120B, as added Pub. L. 107–110, title I, §101, Jan. 8, 2002, 115 Stat. 1512; renumbered §1119 and amended Pub. L. 114–95, title I, §§1000(5), 1013, Dec. 10, 2015, 129 Stat. 1814, 1875.)

Editorial Notes

REFERENCES IN TEXT

The Head Start Act, referred to in subsec. (c), is subchapter B (§§635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 6322, Pub. L. 89–10, title I, §1120A, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3559; amended Pub. L. 104–134, title I, §101(b) [title II, §2754], Apr. 26, 1996, 110 Stat. 1321–77, 1321–150; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, related to fiscal requirements, prior to the general amendment of this subchapter by Pub. L. 107–110. See section 6321 of this title.

A prior section 1119 of Pub. L. 89–10 was classified to section 6319 of this title, prior to repeal by Pub. L. 114–95.

Another prior section 1119 of Pub. L. 89–10 was classified to section 6320 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

A prior section 6323, Pub. L. 89–10, title I, §1120B, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3560, related to coordination requirements, prior to its omission in the general amendment of this subchapter by Pub. L. 107–110.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–95, §1013(1), struck out “such as the Early Reading First program” after “early childhood development programs” and inserted at end “Each local educational agency shall develop agreements with such Head Start agencies and other entities to carry out such activities.”

Subsec. (b). Pub. L. 114–95, §1013(2)(A), substituted “early childhood education programs” for “early childhood development programs, such as the Early Reading First program,” in introductory provisions.

Subsec. (b)(1). Pub. L. 114–95, §1013(2)(B), substituted “early childhood education program” for “early childhood development program such as the Early Reading First program”.